



State of Wisconsin
2011-2012 LEGISLATURE

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0422/PI

LRB-0430/1

CMH:kjf:ph

DOA: Kirby

2011 SENATE BILL 214

October 5, 2011 - Introduced by Senators HARSDORE, OLSEN and SCHULTZ, cosponsored by Representatives VOS, KERKMAN, BALLWEG, KAUFERT, NERISON, BROOKS, ENDSLEY, MARKLEIN and A. OTT. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

PWF

don't you

1 AN ACT *to repeal* 165.76 (2m), 165.76 (3) and 165.77 (4) (a) and (b); *to renumber*
2 *and amend* 165.765 (1), 165.765 (2) (a) and (b) and 165.77 (4) (intro.); *to*
3 *amend* 51.20 (13) (cr), 165.76 (1) (av), 165.76 (1) (br), 165.76 (1) (cr), 165.76 (1)
4 (g), 165.76 (1m), 165.76 (2r), 165.76 (4), 165.765 (title), 165.77 (2) (b), 165.77
5 (2m) (c), 165.77 (3), 938.34 (15) (b), 971.17 (1m) (a), 973.047 (1f), 973.047 (2) and
6 980.063 (2); and *to create* 165.77 (4) (am) 1., 2. and 3., 165.84 (7) and 970.02
7 (8) of the statutes; **relating to:** requiring a person arrested for or charged with
8 certain offenses, or a juvenile taken into custody for certain offenses, to provide
9 a biological specimen for deoxyribonucleic acid analysis; inclusion of the
10 analysis results in the deoxyribonucleic acid data bank; requiring the exercise
11 of rule-making authority; and providing a penalty.

the budget

Analysis by the Legislative Reference Bureau

Under current law, certain persons are required to submit biological specimens to the crime laboratories for deoxyribonucleic acid (DNA) analysis. These persons include: a juvenile who has been adjudicated delinquent for certain offenses; a person who is or was in prison for a felony or found guilty of a felony; a person who

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was found guilty of fourth-degree sexual assault, lewd and lascivious behavior, or exposing genitals to a child for sexual gratification; a person who has been found not guilty by reason of mental disease or defect for certain sexual assaults; a person who has been found to be a sexually violent person; and a person who is required by a court to provide a biological specimen.

This bill requires law enforcement agencies to collect a biological specimen for DNA analysis from every adult who is arrested for a felony or for fourth-degree sexual assault, lewd and lascivious behavior, failure to submit a required biological specimen, or exposing genitals to a child for sexual gratification and from each juvenile taken into custody for certain sexual assault offenses. The bill requires the law enforcement agency to submit the specimen to the crime laboratories for DNA analysis and inclusion of the adult's or minor's DNA profile in the data bank. The bill provides that the crime laboratories must, at the person's request, expunge information about a person who was required to submit a biological specimen in connection only with an arrest if the person is not charged with a crime within one year of the arrest or, if the person is a juvenile, a delinquency petition is not filed; criminal charges are dismissed; or the person is found not guilty of the crime.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 51.20 (13) (cr) of the statutes is amended to read:

51.20 (13) (cr) If the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, the court shall require the individual to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. Biological specimens required under this paragraph shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

SECTION 2. 165.76 (1) (av) of the statutes is amended to read:

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1 165.76 (1) (av) Is or was found guilty on or after January 1, 2000, of any felony
 2 or any violation of s. 165.765 (1), ~~2009~~ stats., or of s. 940.225 (3m), 944.20, ~~946.52~~,
 3 or 948.10 (1) (b).

4 SECTION 3. 165.76 (1) (br) of the statutes is amended to read:

5 165.76 (1) (br) Has been found not guilty or not responsible by reason of mental
 6 disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17,
 7 for any felony or a violation of s. 165.765 (1), ~~2009~~ stats., or of s. 940.225 (3m), 944.20,
 8 ~~946.52~~, or 948.10 (1) (b).

9 SECTION 4. 165.76 (1) (cr) of the statutes is amended to read:

10 165.76 (1) (cr) Is or was in institutional care on or after January 1, 2000, for
 11 a felony or any violation of s. 165.765 (1), ~~2009~~ stats., or of s. 940.225 (3m), 944.20,
 12 ~~946.52~~, or 948.10 (1) (b).

13 SECTION 5. 165.76 (1) (g) of the statutes is amended to read:

14 165.76 (1) (g) Has been required by a court under s. 51.20 (13) (cr), ~~165.84~~ (7),
 15 938.34 (15m) (15), ~~970.02~~ (8), 971.17 (1m) (a), 973.047, or 980.063 to provide a
 16 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

17 SECTION 6. 165.76 (1m) of the statutes is amended to read:

18 165.76 (1m) If a person is required to provide a biological specimen under sub.
 19 (1) (a) to (g) and the department of justice does not have the data obtained from
 20 analysis of a biological specimen from the person that the department is required to
 21 maintain in the data bank under s. 165.77 (3), the department may require the
 22 person to provide a biological specimen, regardless of whether the person previously
 23 provided a biological specimen under this section or s. 51.20 (13) (cr), ~~165.84~~ (7),
 24 938.34 (15), ~~970.02~~ (8), 971.17 (1m) (a), 973.047, or ~~980.63~~ ~~980.063~~. The department
 25 of justice, the department of corrections, a district attorney, or a county sheriff, shall

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SECTION 6

1 notify any person whom the department of justice requires to provide a biological
2 specimen under this subsection.

3 SECTION 7. 165.76 (2m) of the statutes ^{is} repealed.

4 SECTION 8. 165.76 (2r) of the statutes is amended to read:

5 165.76 (2r) Failure by a person who is required to provide a biological specimen
6 under sub. (1) to provide the biological specimen at the time and place provided under
7 sub. (2m) in accordance with the rules promulgated under sub. (4) does not relieve
8 the person of the obligation to provide a biological specimen to the state crime
9 laboratories for deoxyribonucleic acid analysis.

10 SECTION 9. 165.76 (3) of the statutes ^{is} repealed.

11 SECTION 10. 165.76 (4) of the statutes is amended to read:

12 165.76 (4) The department of justice may shall promulgate rules to implement
13 establishing procedures and time limits for obtaining and submitting biological
14 specimens under this section and ss. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02
15 (8), 971.17 (1m) (a), 973.047, and 980.063, and for carrying out the department's
16 duties under this section. The rules shall specify whether a person who is required
17 under this section or s. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m)
18 (a), 973.047, or 980.063 to provide a biological specimen for deoxyribonucleic acid
19 analysis must provide a new biological specimen if the crime laboratories already
20 have a biological specimen from the person or if data obtained from deoxyribonucleic
21 acid analysis of the person's biological specimen are already included in the data
22 bank under s. 165.77 (3).

23 SECTION 11. 165.765 (title) of the statutes is amended to read:

24 165.765 (title) **Biological specimen; penalty and immunity.**

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SECTION 12. 165.765 (1) of the statutes is renumbered 946.52 and amended to read:

946.52 Failure to submit biological specimen. Whoever intentionally fails to comply with a requirement to submit a biological specimen under s. 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 973.047, or 980.063 may be fined not more than \$10,000 or imprisoned for not more than 9 months or both is guilty of a Class A misdemeanor.

SECTION 13. 165.765 (2) (a) and (b) of the statutes are renumbered 165.765 (1m) and (2m) and amended to read:

165.765 (1m) Any physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician who obtains a biological specimen under s. 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 973.047, or 980.063 is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

(2m) Any employer of the physician, nurse, technologist, assistant, or person under ~~par. (a)~~ sub. (1m) or any hospital where blood is withdrawn by that physician, nurse, technologist, assistant, or person has the same immunity from liability under ~~par. (a)~~ sub. (1m).

SECTION 14. 165.77 (2) (b) of the statutes is amended to read:

165.77 (2) (b) Paragraph (a) does not apply to specimens received under s. 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063.

SECTION 15. 165.77 (2m) (c) of the statutes is amended to read:

165.77 (2m) (c) Paragraph (b) does not apply to specimens received under s. 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063.

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SECTION 16. 165.77 (3) of the statutes is amended to read:

165.77 (3) If the laboratories receive a human biological specimen under s. 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063, the laboratories shall analyze the deoxyribonucleic acid in the specimen.

The laboratories shall maintain a data bank based on data obtained from deoxyribonucleic acid analysis of those specimens. The laboratories may compare the data obtained from one specimen with the data obtained from other specimens.

The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney or subject of the data. The data may be used in criminal and delinquency actions and proceedings.

~~The laboratories shall destroy specimens obtained under this subsection after analysis has been completed and the applicable court proceedings have concluded.~~

SECTION 17. 165.77 (4) (intro.) of the statutes is renumbered 165.77 (4) (am) (intro.) and amended to read:

165.77 (4) (am) (intro.) A person whose deoxyribonucleic acid analysis data ~~has~~ have been included in the data bank under sub. (3) may request expungement on the grounds that his or her conviction or adjudication has been reversed, set aside or vacated. The all of the following conditions are satisfied:

(bm) If the conditions under par. (am) are satisfied, the laboratories shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person if it receives all of the following: upon receiving the person's written request for expungement and any documentation required by the department of justice under rules promulgated under sub. (8).

SECTION 18. 165.77 (4) (a) and (b) of the statutes are repealed.

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7-21

1 **SECTION 19.** 165.77 (4) (am) 1., 2. and 3. of the statutes are created to read:

2 165.77 (4) (am) 1. All convictions or adjudications for which the person was
3 required to submit a biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15),
4 971.17 (1m) (a), 973.047, or 980.063 have been reversed, set aside, or vacated.

5 2. If the person was required to provide a biological specimen under s. 165.84
6 (7) in connection with an arrest or under s. 970.02 (8), one of the following applies:

7 a. All charges filed in connection with the arrest and all charges for which the
8 person was required to provide a biological specimen under s. 970.02 (8) have been
9 dismissed.

10 b. The trial court reached final disposition for all charges in connection with
11 the arrest and for any charges for which the person was required to provide a
12 biological specimen under s. 970.02 (8), and the person was not adjudged guilty of a
13 crime in connection with the arrest or any charge for which the person was required
14 to provide a biological specimen under s. 970.02 (8).

15 c. At least one year has passed since the arrest and the person has not been
16 charged with a crime in connection with the arrest, and the person was not required
17 to provide a biological specimen under s. 970.02 (8).

18 d. The person was adjudged guilty of a crime in connection with the arrest or
19 any charge for which the person was required to provide a biological specimen under
20 s. 970.02 (8), and all such convictions have been reversed, set aside, or vacated.

21 3. If the person was required to provide a biological specimen under s. 165.84
22 (7) in connection with being taken into custody under s. 938.19, one of the following
23 applies:

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1 a. All criminal complaints or delinquency petitions alleging that the person
2 violated s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection
3 with the taking into custody have been dismissed.

4 b. The trial court reached final disposition for all allegations of a violation of
5 s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the
6 taking into custody and the person was not convicted or adjudged delinquent for a
7 violation of s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection
8 with the taking into custody.

9 c. At least one year has passed since the person was taken into custody and no
10 criminal complaint or delinquency petition alleging a violation of s. 940.225, 946.52,
11 948.02 (1) or (2), 948.025, or 948.085 (2) has been filed against the person in
12 connection with the taking into custody.

13 d. The person was convicted or adjudged delinquent for a violation of s. 940.225,
14 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into
15 custody and the conviction or delinquency adjudication has been reversed, set aside,
16 or vacated.

17 SECTION 20. 165.84 (7) of the statutes is created to read:

18 165.84 (7) (a) Subject to rules promulgated under s. 165.76 (4), all persons in
19 charge of law enforcement and tribal law enforcement agencies shall obtain a
20 biological specimen for deoxyribonucleic acid analysis from each individual arrested for
21 a felony or for an offense under s. 940.225 (3m), 944.20, 946.52, or 948.10 (1) (b) and
22 each minor taken into custody for an offense under 940.225, 946.52, 948.02 (1) or (2),
23 948.025, or 948.085 (2). The person in charge of the law enforcement or tribal law
24 enforcement agency shall submit the specimen to the crime laboratories for

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1 deoxyribonucleic acid analysis and inclusion of the adult or minor's ^{individual's} deoxyribonucleic
2 acid profile in the data bank under s. 165.77 (3).

3 (b) Biological samples required under par. (a) shall be obtained and submitted
4 as specified in rules promulgated by the department of justice under s. 165.76 (4).

5 (c) Biological specimens obtained under this section may be used only as
6 provided under s. 165.77.

7 **SECTION 21.** 938.34 (15) (b) of the statutes is amended to read:

8 938.34 (15) (b) ~~The department of justice shall promulgate rules providing~~
9 ~~procedures for juveniles to provide specimens~~ Biological samples required under par.
10 (a) and for the transportation of the specimens to the state crime laboratories under
11 s. 165.77 shall be obtained and submitted as specified in rules promulgated by the
12 department of justice under s. 165.76 (4).

13 **SECTION 22.** 970.02 (8) of the statutes is created to read:

14 970.02 (8) If the offense charged is a felony or an offense under s. 940.225 (3m),
15 944.20, 946.52, or 948.10 (1) (b), the judge shall determine if a biological specimen
16 has been obtained from the defendant under s. 165.84 (7), and, if not, the judge shall
17 direct that a law enforcement agency or tribal law enforcement agency obtain a
18 biological specimen from the defendant and submit it to the state crime laboratories
19 as specified in rules promulgated by the department of justice under s. 165.76 (4).

20 **SECTION 23.** 971.17 (1m) (a) of the statutes is amended to read:

21 971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of
22 mental disease or defect for a felony or a violation of s. 165.765 (1), ²⁰¹¹ ~~2009~~ stats., or of
23 s. 940.225 (3m), ^{INS 9-23A} ~~944.20, 946.52~~ ^{INS 9-23B} or 948.10 (1) (b), the court shall require the person
24 to provide a biological specimen to the state crime laboratories for deoxyribonucleic
25 acid analysis. Biological specimens required under this paragraph shall be obtained

*** Note: I am still looking
into how juveniles fit into this initial
hearing process.

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SECTION 23

1 and submitted as specified in rules promulgated by the department of justice under
2 s. 165.76 (4).

3 **SECTION 24.** 973.047 (1f) of the statutes is amended to read:

4 973.047 (1f) If a court imposes a sentence or places a person on probation for
5 a felony conviction or for a conviction for a violation of s. 165.765 (1), 2009 stats., or
6 of s. 940.225 (3m), 944.20, or 948.10 (1) (b), the court shall require the person to
7 provide a biological specimen to the state crime laboratories for deoxyribonucleic
8 acid analysis.

9 **SECTION 25.** 973.047 (2) of the statutes is amended to read:

10 973.047 (2) ~~The department of justice shall promulgate rules providing for~~
11 ~~procedures for defendants to provide specimens when~~ Biological samples required
12 ~~to do so under this section and for the transportation of those specimens to the state~~
13 ~~crime laboratories for analysis under s. 165.77 sub. (1f) shall be obtained and~~
14 submitted as specified in rules promulgated by the department of justice under s.
15 165.76 (4).

16 **SECTION 26.** 980.063 (2) of the statutes is amended to read:

17 980.063 (2) ~~The department of justice shall promulgate rules providing for~~
18 ~~procedures for defendants to provide specimens~~ Biological samples required under
19 sub. (1) and for the transportation of those specimens to the state crime laboratories
20 ~~for analysis under s. 165.77 (a) shall be obtained and submitted as specified in rules~~
21 promulgated by the department of justice under s. 165.76 (4).

22 **SECTION 27. Nonstatutory provisions.**

23 (1) EARLY SUBMISSION OF BIOLOGICAL SPECIMENS FOR PERSONS ARRESTED OR TAKEN
24 INTO CUSTODY.

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1 (a) Beginning on the effective date of this paragraph, a law enforcement agency
2 or a tribal law enforcement agency may obtain a biological specimen from an adult
3 arrested for a felony or for a violation of section 165.765 (1), 940.225 (3m), 944.20, or
4 948.10 (1) (b) of the statutes or from a minor taken into custody for an offense under
5 section 165.765 (1), 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) of the statutes,
6 and submit the specimen to the state crime laboratories for deoxyribonucleic acid
7 analysis.

8 (b) If a law enforcement or tribal law enforcement agency submits a biological
9 specimen to the state crime laboratories under paragraph (a), the crime laboratories
10 shall analyze the deoxyribonucleic acid in the biological specimen and include the
11 deoxyribonucleic acid profile from the biological specimen in the data bank under
12 section 165.77 (3) of the statutes.

13 (c) Paragraph (a) does not apply after the effective date of this paragraph.

14 **SECTION 28. Initial applicability.**

15 (1) The treatment of section 165.84 (7) (a) of the statutes first applies to persons
16 arrested or taken into custody on the effective date of this subsection.

17 (2) The treatment of section 970.02 (8) of the statutes first applies to initial
18 appearances held on the effective date of this subsection.

19 **SECTION 29. Effective dates.** This act takes effect on the first day of the 13th
20 month beginning after publication, except as follows:

21 (1) SECTION 27 (1) (a) and (b) of this act takes effect on the day after publication.

22 (END)

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LEGISLATIVE REFERENCE BUREAU

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1 Insert A (no paragraph)

Under this bill, the following individuals must submit biological specimens to the crime laboratories in DOJ for DNA analysis: a juvenile who has been adjudicated delinquent, or taken into custody, for an offense that would be a felony if committed by an adult, fourth-degree sexual assault, endangering safety by the use of a dangerous weapon, lewd and lascivious behavior, prostitution, patronizing prostitutes, pandering, failure to submit a biological specimen, and exposing genitals to a child for sexual gratification; an adult who is convicted of a misdemeanor; and an adult who is arrested for a felony or for fourth-degree sexual assault, endangering safety by the use of a dangerous weapon, lewd and lascivious behavior, prostitution, patronizing prostitutes, pandering, failure to submit a biological specimen, and exposing genitals to a child for sexual gratification. If, at the time of the individual is charged with one of these offenses, the court determines that a biological specimen was not obtained when he or she was arrested or taken into custody, the court must order a law enforcement agency to obtain the specimen.

Current law grants immunity from civil or criminal liability to certain medical persons who obtain biological specimens in accordance with the requirements. This bill grants similar immunity to certain law enforcement personnel and DHS employees and allows them to use reasonable force in obtaining a specimen if the individual refuses to provide the specimen.

Under current law, Specimens obtained must be submitted to the crime laboratories in DOJ for DNA analysis and inclusion of the DNA profile in the data bank. An individual whose DNA data are in the data bank due to a conviction or adjudication may request in writing that the data be removed on the grounds that the conviction or adjudication has been reversed, set aside, or vacated. If the crime laboratories receive a certified copy of the court order reversing, setting aside, or vacating the conviction or adjudication, the laboratories must purge all records and identifiable information in the data bank pertaining to the individual and destroy all samples from the individual. Under this bill, if an individual submitted a specimen at arrest, when taken into custody, or by court order if, when the charges were filed, the judge determined that the individual had not submitted a specimen, DOJ must similarly purge all records and information after receiving a written request if all charges requiring submission have been dismissed; if the trial court reached a final disposition and the person was not found guilty of any charges requiring submission; if at least one year has passed since the arrest and the person has not been charged; or if the person was found guilty of a crime requiring submission but all such convictions have since been reversed, set aside, or vacated.

a Under current law, if a court imposes a sentence or places a person on probation for sexual assault, first-degree or second-degree sexual assault of a child, repeated sexual assault of a child, or sexual assault of a child placed in substitute care (sex offense), the court must impose a DNA analysis surcharge of \$250 and if a court imposes a sentence or places a person on probation for a felony conviction that is not a sex offense, the court may impose a DNA analysis surcharge of \$250. Under this

bill, if a court imposes a sentence or place^s a person on probation, the court must impose a \$250 DNA surcharge for any felony and a \$150 DNA surcharge for any misdemeanor.

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SECTION 1. 20.455 (2) (Lm) of the statutes is amended to read:

20.455 (2) (Lm) *Crime laboratories; deoxyribonucleic acid analysis.* All moneys received from crime laboratories and drug law enforcement surcharges authorized under s. 165.755 and deoxyribonucleic acid analysis surcharges authorized under s. 973.046 (1r) to provide deoxyribonucleic acid analysis, to administer s. 165.77, to pay for the costs of mailing and materials under s. 165.76 for the submission of biological specimens by the departments of corrections and health services and by county sheriffs, and to transfer to the appropriation account under par. (kd) the amounts in the schedule under par. (kd).

History: 1971 c. 125; 1973 c. 90, 336; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 29, 418; 1979 c. 34 ss. 286m, 290, 523 to 526; 1979 c. 189, 219, 355; 1981 c. 20, 169; 1983 a. 27 ss. 427 to 430, 1800; 1983 a. 199, 523; 1985 a. 29, 120; 1987 a. 27, 326, 399; 1989 a. 31, 122, 336; 1991 a. 11, 39, 269; 1993 a. 16, 98, 193, 460, 496; 1995 a. 27 ss. 1014h to 1029, 9126 (19), 9130 (4); 1995 a. 227; 1997 a. 27, 237; 1999 a. 5, 9, 186; 2001 a. 16, 109; 2003 a. 33, 139, 309, 326; 2005 a. 25 ss. 356c to 363r, 415m to 415v, 415w, 416g, 416h; 2005 a. 60, 254, 433; 2007 a. 1; 2007 a. 20 ss. 482 to 500, 9121 (6) (a); 2007 a. 200; 2009 a. 28, 179, 358; 2011 a. 32, 35.

SECTION 2. 46.07 of the statutes is amended to read:

46.07 Property of patients or residents. All money including wages and other property delivered to an officer or employee of any institution for the benefit of a patient or resident shall immediately be delivered to the steward, who shall enter the money upon the steward's books to the credit of the patient or resident. The property shall be used only under the direction and with the approval of the superintendent and for the crime victim and witness assistance surcharge under s. 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the patient or resident. If the money remains

uncalled for for one year after the patient's or resident's death or departure from the institution, the superintendent shall deposit the money in the general fund. If any patient or resident leaves property, other than money, uncalled for at an institution for one year, the superintendent shall sell the property, and the proceeds shall be deposited in the general fund. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (c).

History: 1979 c. 221 s. 2202 (20); 1983 a. 27; 1989 a. 31, 107; 1993 a. 16; 1997 a. 27; 2005 a. 25, 254, 433.

SECTION 3. 51.20 (13) (cr) of the statutes is amended to read:

51.20 (13) (cr) If the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed a violation that would be a felony if committed by an adult ^{in this state} or a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085 (3m), 941.20 (1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b), the court shall require the individual to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; 2007 a. 20, 45, 116; 2009 a. 137, 258, 260.

SECTION 4. 165.76 (1) (am) of the statutes is created to read:

165.76 (1) (am) Is or was adjudicated delinquent for an act that if committed by an adult in this state would be a felony or for a violation of s. 940.225 (3m), 941.20 (1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b).

SECTION 5. 165.76 (1) (as) of the statutes is created to read:

165.76 (1) (as) Is or was found guilty of any misdemeanor on or after the effective date of this paragraph [LRB inserts date].

1 **SECTION 6.** 165.76 (1) (av) of the statutes is renumbered 165.76 (1) (av) (intro.)
2 and amended to read:

3 165.76 (1) (av) (intro.) Is or was found guilty on or after January 1, 2000, of any
4 of the following:

5 1. Any felony or any

6 2. Before the effective date of this subdivision [LRB inserts date], any
7 violation of s. 165.765 (1) 2011 stats., 940.225 (3m), 944.20, or 948.10 (1) (b).

History: 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 77, 440; 1997 a. 35, 283; 1999 a. 9; 2001 a. 96; 2005 a. 277, 344; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 261; 2011 a. 257; 2011 a. 260 s. 81.

8 **SECTION 7.** 165.76 (1) (aw) of the statutes is created to read:

9 165.76 (1) (aw) Is or was found guilty on or after January 1, 2000, and before
10 the effective date of this paragraph [LRB inserts date], of any violation of s.
11 940.225 (3m), 944.20, or 948.10.

History: 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 77, 440; 1997 a. 35, 283; 1999 a. 9; 2001 a. 96; 2005 a. 277, 344; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 261; 2011 a. 257; 2011 a. 260 s. 81.

12 **SECTION 8.** 165.76 (1) (b) of the statutes is renumbered 165.76 (1) (bm).

13 **SECTION 9.** 165.76 (1) (bg) of the statutes is created to read:

14 165.76 (1) (bg) Is or was sentenced or placed on probation on or after August
15 12, 1993, for a violation of s. 940.225, 948.02 (1) or (2), or 948.025.

16

17 Insert 4-24

18 **SECTION 10.** 165.765 (title) of the statutes is amended to read:

19 **165.765 (title) Biological specimen; penalty force and immunity.**

History: 1993 a. 98; 1995 a. 77, 440.

20

21 Insert 5-18

22 **SECTION 11.** 165.765 (1g) and (1m) of the statutes are created to read:

23 **165.765 (1g)** In this section:

1 (a) "Correctional officer" has the meaning given in s. 301.28 (1).

2 (b) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

3 (c) "Jail officer" has the meaning given in s. 165.85 (2) (bn).

4 (d) "Tribal officer" has the meaning given in s. 165.85 (2) (g).

5 (1m) A law enforcement officer; a jail officer; a tribal officer; a correctional
6 officer; a probation, extended supervision, or parole officer; or an employee of the
7 department of health services may use reasonable force to obtain a biological
8 specimen from a person who intentionally refuses to provide a biological specimen
9 that is required under s. 165.76 (1), 165.84 (7), or 970.02 (8).

10 SECTION 12. 165.765 (2) (a) of the statutes is renumbered 165.765 (2) (a) 1. and
11 amended to read:

12 165.765 (2) (a) 1. Any physician, registered nurse, medical technologist,
13 physician assistant, or person acting under the direction of a physician who obtains
14 a biological specimen under s. 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02
15 (8), 971.17 (1m) (a), 973.047, or 980.063 is immune from any civil or criminal liability
16 for the act, except for civil liability for negligence in the performance of the act.

History: 1993 a. 98; 1995 a. 77, 440.

17 SECTION 13. 165.765 (2) (b) of the statutes is renumbered 165.765 (2) (a) 2. and
18 amended to read:

19 165.765 (2) (a) 2. Any employer of the physician, nurse, technologist, assistant,
20 or person under ~~par. (a)~~ subd. 1. or any hospital where blood is withdrawn by that
21 physician, nurse, technologist, assistant, or person ~~has the same immunity from~~
22 ~~liability under par. (a)~~ is immune from any civil or criminal liability for the act, except
23 for civil liability for negligence in the performance of the act.

History: 1993 a. 98; 1995 a. 77, 440.

24 SECTION 14. 165.765 (2) (bm) of the statutes is created to read:

1 165.765 (2) (bm) A law enforcement officer; a jail officer; a tribal officer; a
2 correctional officer; a probation, extended supervision, or parole officer; or an
3 employee of the department of health services, who is authorized to collect biological
4 specimens, is immune from civil or criminal liability for collecting a biological
5 specimen if the collection is in compliance with sub. (1m) and s. 165.76 and performed
6 in good faith and in a reasonable manner.

7 **SECTION 15.** 165.77 (1) (am) of the statutes is created to read:

8 165.77 (1) (am) "Juvenile offense requiring the submission of a specimen"
9 means an offense for which the juvenile is required under s. 938.34 (15) (a) 1 to
10 provide a biological specimen to the state crime laboratories for deoxyribonucleic
11 acid analysis.

12 **SECTION 16.** 165.77 (2) (a) 2. of the statutes is amended to read:

13 165.77 (2) (a) 2. The laboratories may compare the data obtained from the
14 specimen with data obtained from other specimens. The laboratories may make data
15 obtained from any analysis and comparison available to law enforcement agencies
16 in connection with criminal or delinquency investigations and, upon request, to any
17 prosecutor, defense attorney, or subject of the data. The data may be used in criminal
18 and delinquency actions and proceedings. The laboratories shall not include data
19 obtained from deoxyribonucleic acid analysis of those specimens received under this
20 paragraph in the data bank under sub. (3). ~~The laboratories shall destroy specimens~~
21 ~~obtained under this paragraph after analysis has been completed and the applicable~~
22 ~~court proceedings have concluded.~~

History: 1993 a. 16, 98; 1995 a. 77, 440; 2001 a. 16; 2005 a. 60; 2011 a. 32.

1 [✓] (bm) If the department determines that the conditions under par. (am) are[✓]
2 satisfied, the laboratories shall purge all records and identifiable information in the
3 data bank pertaining to the person and destroy all samples from the person if it
4 receives all of the following: [✓] upon receiving the person's written request [✓] for
5 expungement and any documentation the department requires under rules[✓]
6 promulgated under sub. (8).[✓]

7 History: 1993 a. 16, 98; 1995 a. 77, 440; 2001 a. 16; 2005 a. 60; 2011 a. 32.

8 Insert 7-2

9 ~~no~~ [✓] If the person was required to submit a biological specimen under s. 51.20 (13)[✓]
10 (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063,[✓]

12 Insert 7-18

 ****NOTE: I removed the language “, and the person was not required to provide a
biological specimen under s. 970.02 (8).” DOJ had requested to remove the “not” but a
person would not be required to provide a specimen under s. 970.02 (8) if the person had
not been charged so I couldn't figure out what that meant. And then the language seems
redundant with the “not” because, again, the person would not be required to provide a
specimen under s. 970.02 (8) without being charged. Please let me know if you would like
other language here.

14 Insert 8-1

15 committed a violation of a juvenile offense requiring the submission of a[✓]
16 specimen

18 Insert 8-7

19 juvenile offense requiring the submission of a specimen

21 Insert 8-17

1 **SECTION 17.** 165.77 (7m) of the statutes is created to read:

2 165.77 (7m) An entry in the data bank that is found to be erroneous does not
3 prohibit the legitimate use of the entry to further a criminal investigation or
4 prosecution. The failure of a law enforcement agency or the laboratories to comply
5 with s. 165.76, 165.765, 165.77, or 165.84, or any rules or procedures adopted to
6 administer those sections, is not grounds for challenging the validity of the data
7 collection, for challenging the use of the sample as provided in those sections, or for
8 the suppression of evidence based upon or derived from any entry in the data bank.

9
10 Insert 8-19

11 , when the individual's fingerprints or other identifying data are obtained,

12
13 Insert 8-23

14 a juvenile offense requiring the submission of a specimen, as defined under s.
15 165.77 (1) (am)

16
17 Insert 9-7

18 **SECTION 18.** 301.32 (1) of the statutes is amended to read:

19 301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT:

20 All money and other property delivered to an employee of any state correctional
21 institution for the benefit of a prisoner or resident shall be delivered to the warden
22 or superintendent, who shall enter the property upon his or her accounts to the credit
23 of the prisoner or resident. The property may be used only under the direction and
24 with the approval of the superintendent or warden and for the crime victim and
25 witness assistance surcharge under s. 973.045 (4), the delinquency victim and

1 witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid
2 analysis surcharge under s. 973.046 [✓](1r), the child pornography surcharge under s.
3 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the
4 prisoner or resident. If the money remains uncalled for for one year after the
5 prisoner's or resident's death or departure from the state correctional institution, the
6 superintendent shall deposit it in the general fund. If any prisoner or resident leaves
7 property, other than money, uncalled for at a state correctional institution for one
8 year, the superintendent shall sell the property and deposit the proceeds in the
9 general fund, donate the property to a public agency or private, nonprofit
10 organization or destroy the property. If any person satisfies the department, within
11 5 years after the deposit, of his or her right to the deposit, the department shall direct
12 the department of administration to draw its warrant in favor of the claimant and
13 it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

History: 1989 a. 31 ss. 980, 981, 2569; 1991 a. 189, 315; 1993 a. 16; 1995 a. 27, 417; 1997 a. 27, 283, 289; 2001 a. 103; 2005 a. 25, 433.

14 **SECTION 19.** 302.12 (2) of the statutes is amended to read:

15 302.12 (2) Money accruing under this section remains under the control of the
16 department, to be used for the crime victim and witness assistance surcharge under
17 s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046 [✓](1r), the
18 drug offender diversion surcharge under s. 973.043, and the benefit of the inmate or
19 the inmate's family or dependents, under rules promulgated by the department as
20 to time, manner and amount of disbursements. The rules shall provide that the
21 money be used for the reasonable support of the inmate's family or dependents before
22 it is allocated for the drug offender diversion surcharge.

History: 1975 c. 396; 1983 a. 27, 66, 528; 1985 a. 332 s. 251 (6); 1989 a. 31 s. 1631; Stats. 1989 s. 302.12; 1993 a. 16; 2005 a. 25.

23 **SECTION 20.** 302.13 of the statutes is amended to read:

302.13 Preservation of property an inmate brings to prison. The department shall preserve money and effects, except clothes, in the possession of an inmate when admitted to the prison and, subject to the crime victim and witness assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042, and the drug offender diversion surcharge under s. 973.043, shall restore the money and effects to the inmate when discharged.

History: 1973 c. 90; 1983 a. 27; 1985 a. 120; 1989 a. 31 s. 1632; Stats. 1989 s. 302.13; 1993 a. 16; 2005 a. 25, 433.

SECTION 21. 814.75 (7) of the statutes is amended to read:

814.75 (7) The deoxyribonucleic acid analysis surcharge under s. 973.046 (1r).

History: 2003 a. 139; 2005 a. 25, 172, 282, 288; 2005 a. 433 ss. 11 to 12; 2007 a. 20, 84, 97; 2009 a. 28, 100, 145; 2011 a. 266.

SECTION 22. 814.76 (5) of the statutes is amended to read:

814.76 (5) The deoxyribonucleic acid analysis surcharge under s. 973.046 (1r).

History: 2003 a. 139; 2005 a. 25, 282, 288; 2005 a. 433 ss. 13 to 14; 2007 a. 20, 84, 97; 2009 a. 28, 100.

SECTION 23. 938.34 (15) (a) 1. and 3. of the statutes are consolidated, renumbered 938.34 (15) (a) and amended to read:

938.34 (15) (a) If the juvenile is adjudicated delinquent on the basis of a violation that would be a felony if committed by an adult or of a violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) (3m), 941.20 (1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b), the court shall require the juvenile to provide comply with the requirement under s. 165.76 (1) (am) by providing a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. 3. The results from deoxyribonucleic acid analysis of a specimen under subd. 1. or 2. this paragraph may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253, 277, 344; 2007 a. 97, 116; 2009 a. 8, 28, 103, 137, 185, 302, 334; 2011 a. 32, 258; s. 35.17 correction in (3) (f) 4.

SECTION 24. 938.34 (15) (a) 2. of the statutes is repealed.

1

2 Insert 9-14

3 941.20 (1),

4

5 Insert 9-15

6 944.30, 944.31, 944.33 (1),

7

8 Insert 9-23 A

9 941.20 (1),

10

11 Insert 9-23 B

12 944.30, 944.31, 944.33 (1),

13

14 Insert 10-3

15 **SECTION 25.** 973.046 (1g) of the statutes is repealed.

16 **SECTION 26.** 973.046 (1r) of the statutes is renumbered 973.046 (1r) (intro.) and
17 amended to read:

18 973.046 (1r) (intro.) If a court imposes a sentence or places a person on
19 probation for a violation of s. 940.225, 948.02 (1) or (2), 948.025, 948.085, the court
20 shall impose a deoxyribonucleic acid analysis surcharge of \$250., calculated as
21 follows:

History: 1993 a. 16; 1995 a. 201; 1997 a. 27; 1999 a. 9; 2003 a. 33; 2005 a. 277.

22 **SECTION 27.** 973.046 (1r) (a) and (b) of the statutes are created to read:

23 973.046 (1r) (a) For each conviction for a felony count, \$250.

24 (b) For each conviction for a misdemeanor count, \$150.

✓
1 **SECTION 28.** 973.047 (1f) of the statutes is amended to read:

2 973.047 (1f) If a court imposes a sentence or places a person on probation for
3 ~~a felony conviction or for a conviction for a violation of s. 165.765 (1), 940.225 (3m),~~
4 ~~944.20, or 948.10~~ ^e ~~(s. 948.10) (1) (b)~~ ^e the court shall require the person to provide a
5 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

~~NOTE: NOTE: The treatment of sub. (1f) by 2009 Wis. Act 202 was not shown in the printed volumes. The correct cross-reference, as affected by Act 202, is shown in brackets. Corrective legislation is pending.~~ NOTE:

History: 1993 a. 16, 98, 227; 1995 a. 440; 1999 a. 9; 2005 a. 275; 2009 a. 202, 261.

6 **SECTION 29.** 973.047 (1m) of the statutes is amended to read:

7 973.047 (1m) The results from deoxyribonucleic acid analysis of a specimen
8 provided under this section may be used only as authorized under s. 165.77 (3). The
9 ~~state crime laboratories shall destroy any such specimen in accordance with s. 165.77~~
10 ~~(3).~~

History: 1993 a. 16, 98, 227; 1995 a. 440; 1999 a. 9; 2005 a. 275; 2009 a. 202, 261.

11
12 Insert 10-16

13 **SECTION 30.** 980.063 (1) (b) of the statutes is amended to read:

14 980.063 (1) (b) The results from deoxyribonucleic acid analysis of a specimen
15 under par. (a) may be used only as authorized under s. 165.77 (3). ~~The state crime~~
16 ~~laboratories shall destroy any such specimen in accordance with s. 165.77 (3).~~

History: 1995 a. 440.

17
18 Insert 11-22

19 **SECTION 9326. Initial applicability; Justice** ^e

20 (1) DEOXYRIBONUCLEIC ACID SPECIMEN SUBMISSIONS AND SURCHARGES. ✓ ✓ ✓

21 (a) The treatment of sections 165.76 (1) (am) and 938.34 (15) (a) 1. and 3. of the
22 statutes first applies to delinquency adjudications that occur on the effective date of
23 this paragraph. ✓

(b) The treatment of section 165.77 (4) (intro.), (a), (am) 1, and 2., and (b) of the statutes first applies to requests for expungement received on the effective date of this paragraph.

(c) The treatment of section 165.84 (7) of the statutes first applies to individuals arrested or taken into custody on the effective date of this paragraph.

(d) The treatment of section 970.02 (8) of the statutes first applies to offenses charged on the effective date of this paragraph.

(e) The treatment of section 971.17 (1m) (a) first applies to findings made on the effective date of this paragraph.

(f) The treatment of section 973.046 (1g) of the statutes, the renumbering and amendment of section 973.046 (1r) of the statutes, and the creation of section 973.046 (1r) (a) and (b) of the statutes first apply to sentences imposed or probations placements made on the effective date of this paragraph.

(g) The treatment of section 973.047 (1f) of the statutes first applies to sentences imposed or probations placements made on the effective date of this paragraph.

SECTION 9426. Effective dates; Justice (cr)

(1) DEOXYRIBONUCLEIC ACID SPECIMEN SUBMISSIONS AND SURCHARGES.

The treatment of sections 51.20 (13) (cr), 165.76 (1) (am), (as), (av), (aw), (b), (bg), (br), and (g), (1m), (2m), (2r), (3), and (4), 165.765 (title), (1), (1g), (1m), and (2) (a), (b), and (bm), 165.77 (1) (am), (2) (a) 2. and (b), (2m) (c), (3), (4) (intro.), (a) (am) 1., 2., and 3., and (b), and (7m), 165.84 (7), 938.34 (15) (a) 1., 2., and 3. and (b), 970.02 (8), 971.17 (1m) (a), 973.047 (1f), (1m), and (2), and 980.063 (1) (b) and (2) of the statutes and

SECTION 9326 (1) (a), (b), (c), (d), (e), and (g) take effect on the first day of the 15th month beginning after publication.

Hanaman, Cathlene

From: Kirby, Peter W - DOA <Peter.Kirby@wisconsin.gov>
Sent: Friday, January 25, 2013 1:14 PM
To: Hanaman, Cathlene
Subject: DNA at Arrest

Hi Cathlene,

DOJ would like the following changes made to the DNR at Arrest draft (0422/P1).

1. **DRAFTING SUGGESTION – Rule Making Authority**

The bill authorizes the department to promulgate rules to bring the Wisconsin arrestee DNA collection process into conformity with HR6014, the Katie Sepich Enhanced DNA Collection Act of 2012, and in doing so apply for non-supplanting grant funding pursuant to the Act.

2. **DRAFTING SUGGESTION – re National DNA Index System**

DNA collection under this section shall also be for purposes of inclusion in the index described in section 210304(a) of the DNA Identification Act of 1994 (42 U.S.C. 14132(a)) or the “National DNA Index System”, of DNA profiles or DNA data from individuals whose profiles or data are collected pursuant to this section.

This is some background from DOJ;

“These suggestions come following our review of HR6014, the federal act creating a \$10 million program to encourage states to implement a DNA arrestee collection program. You may also be interested to know, in creating the program, the congress found funding for this program by moving/appropriating \$10 million from the Coverdell DNA Analysis Backlog Grant Program. DOJ has successfully participated in this grant program. As with any many federal grant programs, estimating how much may be available to an individual state of the \$10 million appropriated, and whether we are ultimately successful in the receipt of any federal grant dollars even with all qualifying components in place is uncertain. What the suggested language gives, in the end, is the department the authority and means to apply.”

Also, DOJ doesn't believe the federal law disallows inclusion of juveniles, so no changes there.

Thanks,

Peter

Peter Kirby
State Budget Office
Phone: 608.267.0370



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0422/P1
CMH:kjf:rs

P2

DOA:.....Kirby, BB0199 - Collecting DNA from persons arrested for a felony

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

offenses

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
JUSTICE

Under current law, certain persons are required to submit biological specimens to the crime laboratories in DOJ for deoxyribonucleic acid (DNA) analysis. These persons include: a juvenile who has been adjudicated delinquent for certain offenses; a person who is or was in prison for a felony or found guilty of a felony; a person who was found guilty of fourth-degree sexual assault, lewd and lascivious behavior, or exposing genitals to a child for sexual gratification; a person who has been found not guilty by reason of mental disease or defect for certain sexual assaults; a person who has been found to be a sexually violent person; and a person who is required by a court to provide a biological specimen. Under this bill, the following individuals must submit biological specimens to the crime laboratories in DOJ for DNA analysis: a juvenile who has been adjudicated delinquent, or taken into custody, for an offense that would be a felony if committed by an adult, fourth-degree sexual assault, endangering safety by the use of a dangerous weapon, lewd and lascivious behavior, prostitution, patronizing prostitutes, pandering, failure to submit a biological specimen, and exposing genitals to a child for sexual gratification; an adult who is convicted of a misdemeanor; and an adult who is arrested for a felony or for fourth-degree sexual assault, endangering safety by the use of a dangerous weapon, lewd and lascivious behavior, prostitution, patronizing prostitutes, pandering, failure to submit a biological specimen, and exposing genitals to a child for sexual

or

or

gratification. If, at the time the individual is charged with one of these offenses, the court determines that a biological specimen was not obtained when he or she was arrested or taken into custody, the court must order a law enforcement agency to obtain the specimen.

Current law grants immunity from civil or criminal liability to certain medical persons who obtain biological specimens in accordance with the requirements. This bill grants similar immunity to certain law enforcement personnel and DHS employees and allows them to use reasonable force in obtaining a specimen if the individual refuses to provide the specimen.

Under current law, specimens obtained must be submitted to the crime laboratories in DOJ for DNA analysis and inclusion of the DNA profile in the data bank. An individual whose DNA data are in the data bank due to a conviction or adjudication may request in writing that the data be removed on the grounds that the conviction or adjudication has been reversed, set aside, or vacated. If the crime laboratories receive a certified copy of the court order reversing, setting aside, or vacating the conviction or adjudication, the laboratories must purge all records and identifiable information in the data bank pertaining to the individual and destroy all samples from the individual. Under this bill, if an individual submitted a specimen at arrest, when taken into custody, or by court order if, when the charges were filed, the judge determined that the individual had not submitted a specimen, DOJ must similarly purge all records and information after receiving a written request if all charges requiring submission have been dismissed; if the trial court reached a final disposition and the person was not found guilty of any charges requiring submission; if at least one year has passed since the arrest and the person has not been charged; or if the person was found guilty of a crime requiring submission but all such convictions have since been reversed, set aside, or vacated.

Under current law, if a court imposes a sentence or places a person on probation for sexual assault, first-degree or second-degree sexual assault of a child, repeated sexual assault of a child, or sexual assault of a child placed in substitute care (sex offense), the court must impose a DNA analysis surcharge of \$250 and if a court imposes a sentence or places a person on probation for a felony conviction that is not a sex offense, the court may impose a DNA analysis surcharge of \$250. Under this bill, if a court imposes a sentence or places a person on probation, the court must impose a \$250 DNA surcharge for any felony^{conviction} and a \$150 DNA surcharge for any misdemeanor^{conviction}.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
1 **SECTION 1.** 20.455 (2) (Lm) of the statutes is amended to read:

2 20.455 (2) (Lm) *Crime laboratories; deoxyribonucleic acid analysis.* All moneys
3 received from crime laboratories and drug law enforcement surcharges authorized
4 under s. 165.755 and deoxyribonucleic acid analysis surcharges authorized under s.
5 973.046 (1r) to provide deoxyribonucleic acid analysis, to administer s. 165.77, to pay
6 for the costs of mailing and materials under s. 165.76 for the submission of biological
7 specimens by the departments of corrections and health services and by county
8 sheriffs, and to transfer to the appropriation account under par. (kd) the amounts in
9 the schedule under par. (kd).

✓
10 **SECTION 2.** 46.07 of the statutes is amended to read:

11 **46.07 Property of patients or residents.** All money including wages and
12 other property delivered to an officer or employee of any institution for the benefit
13 of a patient or resident shall immediately be delivered to the steward, who shall enter
14 the money upon the steward's books to the credit of the patient or resident. The
15 property shall be used only under the direction and with the approval of the
16 superintendent and for the crime victim and witness assistance surcharge under s.
17 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34
18 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the child
19 pornography surcharge under s. 973.042, the drug offender diversion surcharge
20 under s. 973.043, or the benefit of the patient or resident. If the money remains
21 uncalled for for one year after the patient's or resident's death or departure from the
22 institution, the superintendent shall deposit the money in the general fund. If any
23 patient or resident leaves property, other than money, uncalled for at an institution
24 for one year, the superintendent shall sell the property, and the proceeds shall be
25 deposited in the general fund. If any person satisfies the department, within 5 years

1 after the deposit, of his or her right to the deposit, the department shall direct the
2 department of administration to draw its warrant in favor of the claimant and it shall
3 charge the same to the appropriation made by s. 20.913 (3) (c).

4 **SECTION 3.** 51.20 (13) (cr) of the statutes is amended to read:

5 51.20 (13) (cr) If the subject individual is before the court on a petition filed
6 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a
7 violation that would be a felony if committed by an adult in this state or a violation
8 of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085 (3m), 941.20 (1), 944.20,
9 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b), the court shall require the
10 individual to provide a biological specimen to the state crime laboratories for
11 deoxyribonucleic acid analysis.

12 **SECTION 4.** 165.76 (1) (am) of the statutes is created to read:

13 165.76 (1) (am) Is or was adjudicated delinquent for an act that if committed
14 by an adult in this state would be a felony or for a violation of s. 940.225 (3m), 941.20
15 (1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b).

16 **SECTION 5.** 165.76 (1) (as) of the statutes is created to read:

17 165.76 (1) (as) Is or was found guilty of any misdemeanor on or after the
18 effective date of this paragraph [LRB inserts date].

19 **SECTION 6.** 165.76 (1) (av) of the statutes is renumbered 165.76 (1) (av) (intro.)
20 and amended to read:

21 165.76 (1) (av) (intro.) Is or was found guilty on or after January 1, 2000, of any
22 of the following:

23 1. Any felony or any

24 2. Before the effective date of this subdivision [LRB inserts date], any
25 violation of s. 165.765 (1), 2011 stats., 940.225 (3m), 944.20, or 948.10 (1) (b).

1 **SECTION 7.** 165.76 (1) (aw) of the statutes is created to read:

2 165.76 (1) (aw) Is or was found guilty on or after January 1, 2000, and before
3 the effective date of this paragraph [LRB inserts date], of any violation of s.
4 940.225 (3m), 944.20, or 948.10.

5 **SECTION 8.** 165.76 (1) (b) of the statutes is renumbered 165.76 (1) (bm).

6 **SECTION 9.** 165.76 (1) (bg) of the statutes is created to read:

7 165.76 (1) (bg) Is or was sentenced or placed on probation on or after August
8 12, 1993, for a violation of s. 940.225, 948.02 (1) or (2), or 948.025.

9 **SECTION 10.** 165.76 (1) (br) of the statutes is amended to read:

10 165.76 (1) (br) Has been found not guilty or not responsible by reason of mental
11 disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17,
12 for any felony or a violation of s. 165.765 (1), 2011 stats., or of s. 940.225 (3m), 944.20,
13 946.52, or 948.10 (1) (b).

14 **SECTION 11.** 165.76 (1) (cr) of the statutes is amended to read:

15 165.76 (1) (cr) Is or was in institutional care on or after January 1, 2000, for
16 a felony or any violation of s. 165.765 (1), 2011 stats., or of s. 940.225 (3m), 944.20,
17 946.52, or 948.10 (1) (b).

18 **SECTION 12.** 165.76 (1) (g) of the statutes is amended to read:

19 165.76 (1) (g) Has been required by a court under s. 51.20 (13) (cr), 165.84 (7),
20 938.34 (15m) (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063 to provide a
21 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

22 **SECTION 13.** 165.76 (1m) of the statutes is amended to read:

23 165.76 (1m) If a person is required to provide a biological specimen under sub.
24 (1) (a) to (g) and the department of justice does not have the data obtained from
25 analysis of a biological specimen from the person that the department is required to

938.21 (1m)
938.30 (2m)

1 maintain in the data bank under s. 165.77 (3), the department may require the
2 person to provide a biological specimen, regardless of whether the person previously
3 provided a biological specimen under this section or s. 51.20 (13) (cr), 165.84 (7),
4 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063. The department of
5 justice, the department of corrections, a district attorney, or a county sheriff, shall
6 notify any person whom the department of justice requires to provide a biological
7 specimen under this subsection.

8 SECTION 14. 165.76 (2m) of the statutes is repealed.

9 SECTION 15. 165.76 (2r) of the statutes is amended to read:

10 165.76 (2r) Failure by a person who is required to provide a biological specimen
11 under sub. (1) to provide the biological specimen at the time and place provided under
12 sub. (2m) in accordance with the rules promulgated under sub. (4) does not relieve
13 the person of the obligation to provide a biological specimen to the state crime
14 laboratories for deoxyribonucleic acid analysis.

15 SECTION 16. 165.76 (3) of the statutes is repealed.

16 SECTION 17. 165.76 (4) of the statutes is amended to read:

17 165.76 (4) The department of justice may shall promulgate rules to implement
18 establishing procedures and time limits for obtaining and submitting biological
19 specimens under this section and ss. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02
20 (8), 971.17 (1m) (a), 973.047, and 980.063, and for carrying out the department's
21 duties under this section. The rules shall specify whether a person who is required
22 under this section or s. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m)
23 (a), 973.047, or 980.063 to provide a biological specimen for deoxyribonucleic acid
24 analysis must provide a new biological specimen if the crime laboratories already
25 have a biological specimen from the person or if data obtained from deoxyribonucleic

938.21 (1m)

938.30 (2m)

938.21 (1m)

938.30 (2m)

1 acid analysis of the person's biological specimen are already included in the data
2 bank under s. 165.77 (3). INS 72

3 SECTION 18. 165.765 (title) of the statutes is amended to read:

4 **165.765 (title) Biological specimen; penalty force and immunity.**

5 SECTION 19. 165.765 (1) of the statutes is renumbered 946.52 and amended to
6 read: 938.21 (1m), 938.30 (2m)

7 **946.52 Failure to submit biological specimen.** Whoever intentionally fails
8 to comply with a requirement to submit a biological specimen under s. 165.76, 165.84
9 (7), 938.34 (15), 970.02 (8), 973.047, or 980.063 may be fined not more than \$10,000
10 or imprisoned for not more than 9 months or both is guilty of a Class A misdemeanor.

11 SECTION 20. 165.765 (1g) and (1m) of the statutes are created to read:

12 165.765 (1g) In this section:

13 (a) "Correctional officer" has the meaning given in s. 301.28 (1).

14 (b) "Jail officer" has the meaning given in s. 165.85 (2) (bn).

15 (c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c). ✓

16 (d) "Tribal officer" has the meaning given in s. 165.85 (2) (g).

17 **(1m)** A law enforcement officer; a jail officer; a tribal officer; a correctional
18 officer; a probation, extended supervision, or parole officer; or an employee of the
19 department of health services may use reasonable force to obtain a biological
20 specimen from a person who intentionally refuses to provide a biological specimen
21 that is required under s. 165.76 (1), 165.84 (7), or 970.02 (8). 938.21 (1m), 938.30 (2m)

22 SECTION 21. 165.765 (2) (a) of the statutes is renumbered 165.765 (2) (a) 1. and
23 amended to read:

24 165.765 (2) (a) 1. Any physician, registered nurse, medical technologist,
25 physician assistant, or person acting under the direction of a physician who obtains

938.21(1m) ✓
938.30(2m) ✓

1 a biological specimen under s. 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02
2 (8), 971.17 (1m) (a), 973.047, or 980.063 is immune from any civil or criminal liability
3 for the act, except for civil liability for negligence in the performance of the act.

4 **SECTION 22.** 165.765 (2) (b) of the statutes is [✓]renumbered 165.765 (2) (a) 2. and
5 amended to read:

6 165.765 (2) (a) 2. Any employer of the physician, nurse, technologist, assistant,
7 or person under ~~par. (a)~~ subd. 1. or any hospital where blood is withdrawn by that
8 physician, nurse, technologist, assistant, or person ~~has the same immunity from~~
9 ~~liability under par. (a)~~ is immune from any civil or criminal liability for the act, except
10 for civil liability for negligence in the performance of the act.

11 **SECTION 23.** 165.765 (2) (bm) of the statutes is [✓]created to read:

12 165.765 (2) (bm) A law enforcement officer; a jail officer; a tribal officer; a
13 correctional officer; a probation, extended supervision, or parole officer; or an
14 employee of the department of health services, who is authorized to collect biological
15 specimens, is immune from civil or criminal liability for collecting a biological
16 specimen if the collection is in compliance with sub. (1m) and s. 165.76 and performed
17 in good faith and in a reasonable manner.

18 **SECTION 24.** 165.77 (1) (am) of the statutes is [✓]created to read:

19 165.77 (1) (am) "Juvenile offense requiring the submission of a specimen"
20 means an offense for which the juvenile is required under s. 938.34 (15) (a) to provide
21 a biological specimen to the state crime laboratories for deoxyribonucleic acid
22 analysis.

23 **SECTION 25.** 165.77 (2) (a) 2. of the statutes is [✓]amended to read:

24 165.77 (2) (a) 2. The laboratories may compare the data obtained from the
25 specimen with data obtained from other specimens. The laboratories may make data

1 obtained from any analysis and comparison available to law enforcement agencies
2 in connection with criminal or delinquency investigations and, upon request, to any
3 prosecutor, defense attorney, or subject of the data. The data may be used in criminal
4 and delinquency actions and proceedings. The laboratories shall not include data
5 obtained from deoxyribonucleic acid analysis of those specimens received under this
6 paragraph in the data bank under sub. (3). ~~The laboratories shall destroy specimens~~
7 ~~obtained under this paragraph after analysis has been completed and the applicable~~
8 ~~court proceedings have concluded.~~

9 **SECTION 26.** 165.77 (2) (b) of the statutes is amended to read:

10 165.77 (2) (b) Paragraph (a) does not apply to specimens received under s. 51.20
11 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or
12 980.063.

938.21 (1m), 938.30 (2m)

13 **SECTION 27.** 165.77 (2m) (c) of the statutes is amended to read:

14 165.77 (2m) (c) Paragraph (b) does not apply to specimens received under s.
15 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047,
16 or 980.063.

17 **SECTION 28.** 165.77 (3) of the statutes is amended to read:

18 165.77 (3) If the laboratories receive a human biological specimen under s.
19 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047,
20 or 980.063, the laboratories shall analyze the deoxyribonucleic acid in the specimen.
21 The laboratories shall maintain a data bank based on data obtained from
22 deoxyribonucleic acid analysis of those specimens. The laboratories may compare
23 the data obtained from one specimen with the data obtained from other specimens.
24 The laboratories may make data obtained from any analysis and comparison
25 available to law enforcement agencies in connection with criminal or delinquency

1 investigations and, upon request, to any prosecutor, defense attorney or subject of
2 the data. The data may be used in criminal and delinquency actions and proceedings.
3 ~~The laboratories shall destroy specimens obtained under this subsection after~~
4 ~~analysis has been completed and the applicable court proceedings have concluded.~~

5 **SECTION 29.** 165.77 (4) (intro.) of the statutes is renumbered 165.77 (4) (am)
6 (intro.) and amended to read:

7 165.77 (4) (am) (intro.) A person whose deoxyribonucleic acid analysis data has
8 have been included in the data bank under sub. (3) may request expungement on the
9 grounds that ~~his or her conviction or adjudication has been reversed, set aside or~~
10 ~~vacated.~~ The all of the following conditions are satisfied:

11 (bm) If the department determines that the conditions under par. (am) are
12 satisfied, the laboratories shall purge all records and identifiable information in the
13 data bank pertaining to the person and destroy all samples from the person if it
14 ~~receives all of the following:~~ upon receiving the person's written request for
15 expungement and any documentation the department requires under rules
16 promulgated under sub. (8).

17 **SECTION 30.** 165.77 (4) (a) and (b) of the statutes are repealed.

18 **SECTION 31.** 165.77 (4) (am) 1., 2. and 3. of the statutes are created to read:

19 165.77 (4) (am) 1. If the person was required to submit a biological specimen
20 under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063, all
21 convictions or adjudications for which the person was required to submit a biological
22 specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047, or
23 980.063 have been reversed, set aside, or vacated.

24 2. If the person was required to provide a biological specimen under s. 165.84
25 (7) in connection with an arrest or under s. 970.02 (8), one of the following applies:

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1 a. All charges filed in connection with the arrest and all charges for which the
2 person was required to provide a biological specimen under s. 970.02 (8) have been
3 dismissed.

4 b. The trial court reached final disposition for all charges in connection with
5 the arrest and for any charges for which the person was required to provide a
6 biological specimen under s. 970.02 (8), and the person was not adjudged guilty of a
7 crime in connection with the arrest or any charge for which the person was required
8 to provide a biological specimen under s. 970.02 (8).

9 c. At least one year has passed since the arrest and the person has not been
10 charged with a crime in connection with the arrest.

****NOTE: I removed the language “, and the person was not required to provide a biological specimen under s. 970.02 (8).” DOJ had requested to remove the “not” but a person would not be required to provide a specimen under s. 970.02 (8) if the person had not been charged so I couldn’t figure out what that meant. And then the language seems redundant with the “not” because, again, the person would not be required to provide a specimen under s. 970.02 (8) without being charged. Please let me know if you would like other language here.

11 d. The person was adjudged guilty of a crime in connection with either the
12 arrest or any charge for which the person was required to provide a biological
13 specimen under s. 970.02 (8), and all such convictions have been reversed, set aside,
14 or vacated.

15 3. If the person was required to provide a biological specimen under s. 165.84
16 (7) in connection with being taken into custody under s. 938.19, one of the following
17 applies:

or under s. 938.21 (1m) or 938.30 (2m) ✓

18 a. All criminal complaints or delinquency petitions alleging that the person
19 committed a violation of a juvenile offense requiring the submission of a specimen
20 in connection with the taking into custody have been dismissed.

b. The trial court reached final disposition for all allegations that the person committed a violation of a juvenile offense requiring the submission of a specimen in connection with the taking into custody and the person was not convicted or adjudged delinquent for a juvenile offense requiring the submission of a specimen in connection with the taking into custody.

c. At least one year has passed since the person was taken into custody and no criminal complaint or delinquency petition alleging that the person committed a violation of a juvenile offense requiring the submission of a specimen has been filed against the person in connection with the taking into custody.

d. The person was convicted or adjudged delinquent for a juvenile offense requiring the submission of a specimen in connection with the taking into custody and the conviction or delinquency adjudication has been reversed, set aside, or vacated.

SECTION 32. 165.77 (7m) of the statutes is created to read:

165.77 (7m) An entry in the data bank that is found to be erroneous does not prohibit the legitimate use of the entry to further a criminal investigation or prosecution. The failure of a law enforcement agency or the laboratories to comply with s. 165.76, 165.765, 165.77, or 165.84, or any rules or procedures adopted to administer those sections, is not grounds for challenging the validity of the data collection, for challenging the use of the sample as provided in those sections, or for the suppression of evidence based upon or derived from any entry in the data bank.

SECTION 33. 165.84 (7) of the statutes is created to read:

165.84 (7) (a) Subject to rules promulgated under s. 165.76 (4), all persons in charge of law enforcement and tribal law enforcement agencies shall obtain, when the individual's fingerprints or other identifying data are obtained, a biological

1 specimen for deoxyribonucleic acid analysis from each individual arrested for a
2 felony or for an offense under s. 940.225 (3m), 941.20 (1), 944.20, 944.30, 944.31,
3 944.33 (1), 946.52, or 948.10 (1) (b) and each minor taken into custody for a juvenile
4 offense requiring the submission of a specimen, as defined under s. 165.77 (1) (am).
5 The person in charge of the law enforcement or tribal law enforcement agency shall
6 submit the specimen to the crime laboratories for deoxyribonucleic acid analysis and
7 inclusion of the individual's deoxyribonucleic acid profile in the data bank under s.
8 165.77 (3).

9 (b) Biological samples required under par. (a) shall be obtained and submitted
10 as specified in rules promulgated by the department of justice under s. 165.76 (4).

11 (c) Biological specimens obtained under this section may be used only as
12 provided under s. 165.77.

13 **SECTION 34.** 301.32 (1) of the statutes is amended to read:

14 **301.32 (1) PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT.**

15 All money and other property delivered to an employee of any state correctional
16 institution for the benefit of a prisoner or resident shall be delivered to the warden
17 or superintendent, who shall enter the property upon his or her accounts to the credit
18 of the prisoner or resident. The property may be used only under the direction and
19 with the approval of the superintendent or warden and for the crime victim and
20 witness assistance surcharge under s. 973.045 (4), the delinquency victim and
21 witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid
22 analysis surcharge under s. 973.046 (1r), the child pornography surcharge under s.
23 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the
24 prisoner or resident. If the money remains uncalled for for one year after the
25 prisoner's or resident's death or departure from the state correctional institution, the

1 superintendent shall deposit it in the general fund. If any prisoner or resident leaves
2 property, other than money, uncalled for at a state correctional institution for one
3 year, the superintendent shall sell the property and deposit the proceeds in the
4 general fund, donate the property to a public agency or private, nonprofit
5 organization or destroy the property. If any person satisfies the department, within
6 5 years after the deposit, of his or her right to the deposit, the department shall direct
7 the department of administration to draw its warrant in favor of the claimant and
8 it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

9 **SECTION 35.** 302.12 (2) of the statutes is amended to read:

10 302.12 (2) Money accruing under this section remains under the control of the
11 department, to be used for the crime victim and witness assistance surcharge under
12 s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the
13 drug offender diversion surcharge under s. 973.043, and the benefit of the inmate or
14 the inmate's family or dependents, under rules promulgated by the department as
15 to time, manner and amount of disbursements. The rules shall provide that the
16 money be used for the reasonable support of the inmate's family or dependents before
17 it is allocated for the drug offender diversion surcharge.

18 **SECTION 36.** 302.13 of the statutes is amended to read:

19 **302.13 Preservation of property an inmate brings to prison.** The
20 department shall preserve money and effects, except clothes, in the possession of an
21 inmate when admitted to the prison and, subject to the crime victim and witness
22 assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis
23 surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042,
24 and the drug offender diversion surcharge under s. 973.043, shall restore the money
25 and effects to the inmate when discharged.

1 SECTION 37. 814.75 (7) of the statutes is amended to read:

2 814.75 (7) The deoxyribonucleic acid analysis surcharge under s. 973.046 (1r).

3 SECTION 38. 814.76 (5) of the statutes is [✓]amended to read:

4 814.76 (5) The deoxyribonucleic acid analysis surcharge under s. 973.046 (1r).

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5 SECTION 39. 938.34 (15) (a) 1. and 3. of the statutes are consolidated,
6 renumbered 938.34 (15) (a) and amended to read:

7 938.34 (15) (a) If the juvenile is adjudicated delinquent on the basis of a
8 violation that would be a felony if committed by an adult in this state or of a violation
9 of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) (3m), 941.20 (1), 944.20, 944.30,
10 944.31, 944.33 (1), 946.52, or 948.10 (1) (b), the court shall require the juvenile to
11 provide comply with the requirement under s. 165.76 (1) (am) by providing a
12 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.
13 3. The results from deoxyribonucleic acid analysis of a specimen under subd. 1. or
14 2. this paragraph may be used only as authorized under s. 165.77 (3). The state crime
15 laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

16 SECTION 40. 938.34 (15) (a) 2. of the statutes is repealed.

17 SECTION 41. 938.34 (15) (b) of the statutes is amended to read:

18 938.34 (15) (b) ~~The department of justice shall promulgate rules providing~~
19 ~~procedures for juveniles to provide specimens~~ Biological samples required under par.
20 (a) ~~and for the transportation of the specimens to the state crime laboratories under~~
21 ~~s. 165.77 shall be obtained and submitted as specified in rules promulgated by the~~
22 department of justice under s. 165.76 (4).

23 SECTION 42. 970.02 (8) of the statutes is created to read:

24 970.02 (8) If the offense charged is a felony or an offense under s. 940.225 (3m),
25 941.20 (1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b), the judge shall

determine if a biological specimen has been obtained from the defendant under s. 165.84 (7), and, if not, the judge shall direct that a law enforcement agency or tribal law enforcement agency obtain a biological specimen from the defendant and submit it to the state crime laboratories as specified in rules promulgated by the department of justice under s. 165.76 (4).

****NOTE: I am still looking into how juveniles fit into this initial hearing process.

SECTION 43. 971.17 (1m) (a) of the statutes is amended to read:

971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a felony or a violation of s. 165.765 (1), 2011 stats., or of s. 940.225 (3m), 941.20 (1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b), the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. Biological specimens required under this paragraph shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

SECTION 44. 973.046 (1g) of the statutes is repealed.

SECTION 45. 973.046 (1r) of the statutes is renumbered 973.046 (1r) (intro.) and amended to read:

973.046 (1r) (intro.) If a court imposes a sentence or places a person on probation for a violation of s. ~~940.225, 948.02 (1) or (2), 948.025, 948.085~~, the court shall impose a deoxyribonucleic acid analysis surcharge of ~~\$250.~~ calculated as follows:

SECTION 46. 973.046 (1r) (a) and (b) of the statutes are created to read:

973.046 (1r) (a) For each conviction for a felony count, \$250.

(b) For each conviction for a misdemeanor count, \$150.

SECTION 47. 973.047 (1f) of the statutes is amended to read:

1 973.047 (1f) If a court imposes a sentence or places a person on probation for
2 ~~a felony conviction or for a conviction for a violation of s. 165.765 (1), 940.225 (3m),~~
3 ~~944.20, or 948.10 (1) (b),~~ the court shall require the person to provide a biological
4 specimen to the state crime laboratories for deoxyribonucleic acid analysis.

5 SECTION 48. 973.047 (1m) of the statutes is amended to read: ✓

6 973.047 (1m) The results from deoxyribonucleic acid analysis of a specimen
7 provided under this section may be used only as authorized under s. 165.77 (3). The
8 ~~state crime laboratories shall destroy any such specimen in accordance with s. 165.77~~
9 ~~(3).~~

10 SECTION 49. 973.047 (2) of the statutes is amended to read: ✓

11 973.047 (2) ~~The department of justice shall promulgate rules providing for~~
12 ~~procedures for defendants to provide specimens when~~ Biological samples ~~required~~
13 ~~to do so under this section and for the transportation of those specimens to the state~~
14 ~~crime laboratories for analysis under s. 165.77 sub. (1f) shall be obtained and~~
15 ~~submitted as specified in rules promulgated by the department of justice under s.~~
16 165.76 (4).

17 SECTION 50. 980.063 (1) (b) of the statutes is amended to read: ✓

18 980.063 (1) (b) The results from deoxyribonucleic acid analysis of a specimen
19 under par. (a) may be used only as authorized under s. 165.77 (3). ~~The state crime~~
20 ~~laboratories shall destroy any such specimen in accordance with s. 165.77 (3).~~

21 SECTION 51. 980.063 (2) of the statutes is amended to read: ✓

22 980.063 (2) ~~The department of justice shall promulgate rules providing for~~
23 ~~procedures for defendants to provide specimens~~ Biological samples required ~~under~~
24 ~~sub. (1) and for the transportation of those specimens to the state crime laboratories~~

1 ~~for analysis under s. 165.77 (a) shall be obtained and submitted as specified in rules~~
2 ~~promulgated by the department of justice under s. 165.76 (4).~~

3 **SECTION 9326. Initial applicability; Justice.**

4 (1) DEOXYRIBONUCLEIC ACID SPECIMEN SUBMISSIONS AND SURCHARGES.

5 (a) The treatment of sections 165.76 (1) (am) and 938.34 (15) (a) 1. and 3. of the
6 statutes first applies to delinquency adjudications that occur on the effective date of
7 this paragraph.

8 (b) The treatment of section 165.77 (4) (intro.), (a), (am) 1., 2., and 3., and (b)
9 of the statutes first applies to requests for expungement received on the effective date
10 of this paragraph.

11 (c) The treatment of section 165.84 (7) of the statutes first applies to individuals
12 arrested or taken into custody on the effective date of this paragraph.

13 (d) The treatment of section 970.02 (8) of the statutes first applies to offenses
14 charged on the effective date of this paragraph.

15 (e) The treatment of section 971.17 (1m) (a) *of the statutes* first applies to findings made on
16 the effective date of this paragraph.

17 (f) The treatment of section 973.046 (1g) of the statutes, the renumbering and
18 amendment of section 973.046 (1r) of the statutes, and the creation of section 973.046
19 (1r) (a) and (b) of the statutes first apply to sentences imposed or probations
20 placements made on the effective date of this paragraph.

21 (g) The treatment of section 973.047 (1f) of the statutes first applies to
22 sentences imposed or probations placements made on the effective date of this
23 paragraph.

24 **SECTION 9426. Effective dates; Justice.**

INS
18-13

938.21 (1m),

938.30 (2m)

(1) DEOXYRIBONUCLEIC ACID SPECIMEN SUBMISSIONS AND SURCHARGES. The treatment of sections 51.20 (13) (cr), 165.76 (1) (am), (as), (av), (aw), (b), (bg), (br), (cr), and (g), (1m), (2m), (2r), (3), and (4), 165.765 (title), (1), (1g), (1m), and (2) (a), (b), and (bm), 165.77 (1) (am), (2) (a) 2. and (b), (2m) (c), (3), (4) (intro.), (a), (am) 1., 2., and 3., and (b), and (7m), 165.84 (7), 938.34 (15) (a) 1., 2., and 3. and (b), 970.02 (8), 971.17 (1m) (a), 973.047 (1f), (1m), and (2), and 980.063 (1) (b) and (2) of the statutes and SECTION 9326 (1) (a), (b), (c), (d), (e), and (g) take effect on the first day of the 15th month beginning after publication. of this act

(END)

(#) new paragraph
AR. (b)

9126 (F) and
↑
AR. (a)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0422/p2ins
CMH:.....

1 Insert 7-2

2 no ~~ff~~ The department shall promulgate rules that allow a biological specimen, or
3 data obtained from analysis of a biological specimen, obtained under this section or
4 s. 51.20 (13) (cr), 165.84 (7), 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17
5 (1m) (a), 973.047, or 980.063 to be submitted for inclusion in an index established
6 under 42 USC 14132 (a) or in another national index system.

8 Insert 15-5

9 **SECTION 1.** 938.21 (1m) of the statutes is created to read:

10 938.21 (1m) BIOLOGICAL SPECIMEN. If the juvenile has been taken into custody
11 on the basis of a violation that would be a felony if committed by an adult in this state
12 or of a violation of s. 940.225 (3m), 941.20 (1), 944.20, 944.30, 944.31, 944.33 (1),
13 946.52, or 948.10 (1) (b), the court shall determine if a biological specimen has been
14 obtained from the juvenile under s. 165.84 (7), and if not, the court shall direct that
15 a law enforcement agency or tribal law enforcement agency obtain a biological
16 specimen from the juvenile and submit it to the state crime laboratories as specified
17 in rules promulgated by the department of justice under s. 165.76 (4).

18 **SECTION 2.** 938.30 (2m) of the statutes is created to read:

19 938.30 (2m) BIOLOGICAL SPECIMEN. If the juvenile is before the court on the basis
20 of a violation that would be a felony if committed by an adult in this state or of a
21 violation of s. 940.225 (3m), 941.20 (1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or
22 948.10 (1) (b), the court shall determine if a biological specimen has been obtained
23 from the juvenile under s. 165.84 (7), and if not, the court shall direct that a law

enforcement agency or tribal law enforcement agency obtain a biological specimen from the juvenile and submit it to the state crime laboratories as specified in rules promulgated by the department of justice under s. 165.76 (4).

Insert 18-3

SECTION 9126. Nonstatutory provisions; Justice.

(1) BIOLOGICAL SPECIMEN; LEGISLATIVE FINDINGS AND RULES.

(a) Legislative findings.

1. The legislative findings in this paragraph relate to the treatment in this act of sections 51.20 (13) (cr), 165.76 (1) (am), (as), (av), (aw), (b), (bg), (br), (cr), and (g), (1m), (2m), (2r), (3), and (4), 165.765 (title), (1), (1g), (1m), and (2) (a), (b), and (bm), 165.77 (1) (am), (2) (a) 2. and (b), (2m) (c), (3), (4) (intro.), (a), (am) 1., 2., and 3., and (b), and (7m), 165.84 (7), 938.21 (1m), 938.30 (2m), 938.34 (15) (a) 1., 2., and 3. and (b), 970.02 (8), 971.17 (1m) (a), 973.047 (1f), (1m), and (2), and 980.063 (1) (b) and (2) of the statutes.

2. The legislature finds that the state has a compelling interest in the accurate identification of criminal offenders and that there is a critical and urgent need to provide law enforcement officers and agencies with the latest scientific technology available for accurately and expeditiously identifying, apprehending, arresting, and convicting criminal offenders and exonerating individuals wrongly suspected or accused of a crime. The legislature further finds that deoxyribonucleic acid testing allows a more certain and rapid identification of offenders as well as the exoneration of those wrongfully suspected or accused and that deoxyribonucleic acid data banks are an important tool in criminal investigations and in deterring and detecting recidivist acts. The legislature further finds that deoxyribonucleic acid testing at the

1 earliest stages of criminal and juvenile proceedings will help prevent perpetrators
2 from concealing their identities and will prevent time-consuming and expensive
3 investigations of innocent individuals. The legislature further finds that the degree
4 of intrusion on an individual's privacy interests is minimized by the method of
5 collection of the biological sample, by the policy of using only deoxyribonucleic acid
6 sequences not currently associated with any known physical or medical
7 characteristics in the creation of a deoxyribonucleic acid profiles, by the limited
8 purposes for which a deoxyribonucleic acid profile may be used under state and
9 federal law, and the availability of expungement for individuals who are not charged
10 with or convicted of the offenses for which the deoxyribonucleic acid sample was
11 collected.

12 (b) *Rules.* The department of justice may, in rules it promulgates under section
13 165.76 of the statutes, as amended by this act, bring the method to obtain or to submit
14 a biological specimen in conformity with the act of Congress known as the Katie
15 Sepich Enhanced DNA Collection Act of 2012 (HR-6014) to apply for nonsupplanting
16 grant funding under that act.

17
18 Insert 18-13

19 The treatment of section 938.21 (1m) and 938.30 (2m) of the statutes first
20 applies to hearings commenced on the effective date of this paragraph.

-0122

Hanaman, Cathlene

From: Kirby, Peter W - DOA <Peter.Kirby@wisconsin.gov>
Sent: Monday, January 28, 2013 11:05 AM
To: Hanaman, Cathlene
Subject: RE: DNA Test at Arrest

Hi Cathlene,

DOJ has another late addition:

They would something like the following for 20.455(2)(jb): The amounts in the schedule for operating costs in the state and regional crime laboratories. (The remaining language in this section can remain intact.).

This should provide enough flexibility to allow ongoing operating costs to be charged to this appropriation.

Thanks,

Peter

From: Hanaman, Cathlene [<mailto:Cathlene.Hanaman@legis.wisconsin.gov>]
Sent: Friday, January 25, 2013 3:38 PM
To: Kirby, Peter W - DOA
Subject: RE: DNA Test at Arrest

We generally do not do findings or intent statements—unless you think the statement will help the provision survive a constitutional challenge and the finding directly addresses the issue. Some reasons being that findings are not substantive law, findings can be redundant, findings can be lifted out of context for odd purposes and have unforeseen effects, findings may become out of date if the statute changes, and findings have undefined terms that may be inconsistent with the statute.

I will change the surcharge.

From: Kirby, Peter W - DOA [<mailto:Peter.Kirby@wisconsin.gov>]
Sent: Friday, January 25, 2013 3:26 PM
To: Hanaman, Cathlene
Subject: DNA Test at Arrest

Hi (again) Cathlene,

I apologize for the barrage of emails over the past couple of days. A few more things for DNA at arrest, I believe there was a legislative finding on the original suggested language. Can that be included on the draft that you are working on? Also, can the surcharge be on each convicting event, not each count/offense?

Thanks,

Peter

Peter Kirby
State Budget Office
Phone: 608.267.0370